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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 377

ANGLO-CHILEAN NITRATE SALES CORPORATION, APPELLANT,

vs.

THE STATE OF ALABAMA

APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

FILED SEPTEMBER 19, 1932

(37,074)

(37,074)

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Proceedings in supreme court of Alabama	a	1
Caption (omitted in printing)	a	
Record from circuit court of Montgomery County	1	1
Caption (omitted in printing)	1	
Notice of appeal from tax assessment	2	1
Bond on appeal (omitted in printing)	3	
Proceedings before State Tax Commission	4	2
Secretary's certificate	4	2
Notice of appeal	4	2
Assessment of franchise tax	6	4
Return filed by Anglo-Chilean Nitrate Sales Corp.	6	4
Petition of Anglo-Chilean Nitrate Sales Corp.	12	10
Motion to strike petition	16	14
Demurrer to petition	16	14
Answer to petition	17	15
Agreed statement of facts	18	16
Order of submission	22	20
Note of testimony	22	20

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	Original	Print
Final decree	23	21
Notice of appeal by State of Alabama	25	22
Citation and service (omitted in printing)	25	
Certificate of appeal	26	23
Certificate as to record (omitted in printing)	27	
Agreement as to exhibits	28	23
Assignments of error	29	24
Submission	30	25
Judgment	30	26
Opinion, Gardner, J.	31	26
Petition for rehearing	45	37
Order overruling petition for rehearing	47	38
Præcipe for transcript of record	48	38
Petition for appeal	50	39
Assignment of errors	51	40
Order allowing appeal	54	42
Citation and acceptance of service (omitted in printing)	56	
Bond on appeal (" " ")	57	
Clerk's certificate (" " ")	59	
Statement of points to be relied upon and designation to print entire record	60	43

[fols. a & b & 1] [Captions omitted]

[fol. 2]

IN CIRCUIT COURT OF MONTGOMERY COUNTY

NOTICE OF APPEAL—Filed April 14, 1930

This notice to be given and filed with the Secretary of the State Tax Commission of the State of Alabama, and with the Register of the Circuit Court of Montgomery County, Alabama.

Take notice that on this day the Anglo-Chilean Nitrate Sales Corporation, a foreign corporation organized under the laws of the State of New York, has taken an appeal from that final assessment of the said State Tax Commission made against the said foreign corporation on the 31st day of March, 1930, in the amount of $1425.69, which said assessment was made as an assessment of a tax on the franchise of the said corporation; the said assessment under the laws of the State of Alabama having the force and effect of a judgment against the said corporation. This appeal is taken by the said corporation from the said final assessment and judgment to the Circuit Court of Montgomery County, sitting in equity, as provided by law; the said corporation having given bond with good and sufficient surety in double the amount of the said final assessment payable to the State of Alabama, which bond is a good and valid bond and sufficient for the purposes of this appeal under the laws of the State of Alabama; and which said bond has been duly taken and approved by the Register of the said Circuit Court of Montgomery County; the said bond being conditioned to pay such judgment as may be rendered against the said foreign corporation in the said Circuit Court.

This notice is hereby given for and as the act of said Anglo-Chilean Nitrate Sales Corporation by its agent duly authorized to give this notice, on this the 14th day of April, 1930.

Anglo-Chilean Nitrate Sales Corporation, a Corporation, by Lange, Simpson & Brantley, Its Duly Authorized Agents and Attorneys.

I do hereby certify that I have on this the 14th day of April, 1930, filed the above notice with the Secretary of the State Tax Commission of the State of Alabama, and also [fol. 3] with the Register of the Circuit Court of Montgomery County, Alabama.

R. B. Barnes, of Attorneys for Anglo-Chilean Nitrate Sales Corporation.

[File endorsement omitted.]

Bond of appeal for $2,851.38, approved and filed April 14, 1930, omitted in printing.

[fol. 4] BEFORE STATE TAX COMMISSION OF ALABAMA

SECRETARY'S CERTIFICATE

I, Julia Klinge, Secretary of the State Tax Commission, do hereby certify that the following pages numbered one to five, constitute a full and complete transcript of the records of the State Tax Commission, showing the rate and the assessment of the franchise tax of the Anglo Chilean Nitrate Sales Corporation for the year beginning January 1, 1930, together with the notices filed by the attorneys for said corporation for the purpose of an appeal from the assessment made by the State Tax Commission to the Circuit Court of Montgomery County sitting in equity.

Julia Klinge, Secretary State Tax Commission.
(Seal.)

BEFORE STATE TAX COMMISSION OF ALABAMA

NOTICE OF APPEAL

THE STATE OF ALABAMA,
Montgomery County:

This notice to be given and filed with the Secretary of the State Tax Commission of the State of Alabama, and with the Register of the Circuit Court of Montgomery County, Alabama.

[fol. 5] Take notice that on this day the Anglo-Chilean Nitrate Sales Corporation, a foreign corporation organized under the laws of the State of New York, has taken an appeal from that final assessment of the said State Tax Commission made against the said foreign corporation on the 31st day of March, 1930, in the amount of $1,425.69, which said assessment was made as an assessment of a tax on the franchise of the said corporation; the said assessment under the laws of the State of Alabama having the force and effect of a judgment against said corporation. This appeal is taken by the said corporation from the said final assessment and judgment to the Circuit Court of Montgomery County, sitting in equity, as provided by law; the said corporation having given bond with good and sufficient surety in double the amount of the said final assessment payable to the State of Alabama, which bond is a good and valid bond and sufficient for the purposes of this appeal under the laws of the State of Alabama: and which said bond has been taken and approved by the Register of the said Circuit Court of Montgomery County; the said bond being conditioned to pay such judgment as may be rendered against the said foreign corporation in the said Circuit Court.

This notice is hereby given for and as the act of said Anglo-Chilean Nitrate Sales Corporation by its agent duly authorized to give this notice, on this the 14th day of April, 1930.

Anglo-Chilean Nitrate Sales Corporation, a Corporation, by Lange, Simpson & Brantley, Its Duly Authorized Agents and Attorneys.

I do hereby certify that I have on this the 14th day of April, 1930, filed the above notice with the Secretary of the State Tax Commission of the State of Alabama, and also with the Register of the Circuit Court of Montgomery County, Alabama.

R. B. Barnes, of Attorneys for Anglo-Chilean Nitrate Sales Corporation.

STATE OF ALABAMA,
State Tax Commission,
Montgomery, Alabama:

[fol. 6] BEFORE STATE TAX COMMISSION OF ALABAMA

In the Matter of the Assessment for Franchise Tax of the ANGLO-CHILEAN NITRATE SALES CORPORATION, a Corporation Organized under the Laws of the State of New York, Qualified to do Business in the State of Alabama

ASSESSMENT OF FRANCHISE TAX

In this matter the State Tax Commission upon the report of the said Anglo-Chilean Nitrate Sales Corporation, filed with the Commission on to wit: March 17th, 1930, does find that the capital employed in the State of Alabama by the said Anglo-Chilean Nitrate Sales Corporation amounts to Seven Hundred and Twelve Thousand Eight Hundred and Forty-six dollars and seventy-two cents ($712,846.72) as shown by said return, and based on said amount of capital employed the State Tax Commission does hereby assess as Franchise Tax for the year 1930 against the said Anglo-Chilean Nitrate Sales Corporation, the sum of One Thousand Four Hundred and Twenty-five dollars and sixty-nine cents ($1,425.69) as provided by the Revenue Act approved July 22nd, 1927, being Acts of the Legislature of Alabama, page 139.

Done at the Capitol, Montgomery, Alabama, this 31st day of March, 1930.

H. S. Long, Chairman State Tax Commission. Julia Klinge, Secretary State Tax Commission.

BEFORE STATE TAX COMMISSION OF ALABAMA

FOREIGN CORPORATION RETURN FOR FRANCHISE TAX

This return must be filed with the State Tax Commission, Montgomery, Alabama, on or before March 15th, 1930.

Special Notice

Payment of the franchise tax becomes due on April 1st and will be delinquent if not paid on or before May 1st, except as hereinafter stated.

Returns must be filed with the State Tax Commission, Montgomery, Alabama, on or before March 15th. A penalty of $10.00 per day for each day's failure to make returns accrues from the above date. On receipt of proper [fol. 7] returns the Commission will assess the tax and will notify all taxpayers of the amounts due. A penalty of 1% per month, and interest at the rate of 8% per annum are provided by law for failure to make payment of the tax on or before May 1st unless the corporation filed its return within the time provided by law, or unless the time for making return shall have been extended by the State Tax Commission in which event the penalty and interest do not accrue until thirty days after assessment and notice from the Sate Tax Commission. Corporations, therefore can protect themselves from penalties and interest only by filing returns on or before March 15th, and by remitting promptly upon receipt of notice of assessment by the State Tax Commission. Return must be executed by the president, or other executive officer, or the Secretary of the corporation.

New Corporations.—See instruction No. 7 as to time for filing returns, penalty, etc.

Instructions

1. The franchise tax rate is two dollars on each thousand dollars (fractions of a thousand in proportion) of the actual amount of capital employed in this State by foreign corporations and runs accordingly to the calendar year.

2. Every corporation doing business in Alabama, not organized under the laws of this State, is required to render a franchise tax return.

3. There must be attached to every return a condensed balance sheet drawn from the books of the corporation as at December 31st, 1929, or as at the close of the corporation's fiscal year ended in 1929 in cases where the books are not regularly closed at the end of each calendar year. Such balance sheet must show the value of each asset listed within and without the State of Alabama. No return will be accepted unless a balance sheet is attached, or unless the return is accompanied by a statement properly sworn to, setting forth a satisfactory reason why such balance sheet cannot be furnished.

4. Duplicate blanks will be sent to every corporation. Only one report should be forwarded to the State Tax Commission. The other blank should be filled out and retained by the corporation for its own files.

5. Question No. 10 in relation to property assessments is [fol. 8] intended to gain information necessary to enable the State Tax Commission to distribute the tax, as required by law, among the counties which may be entitled to a pro rate part thereof. In answering this question give aggregate valuation of the property as returned by the taxpayer in each county as at October 1, 1929. Do not give the hundred per cent valuation, but give the sixty per cent valuation as returned for assessment by the taxpayer. If assessment return has not been made to the Tax Assessor for the current tax year beginning October 1, 1929, in answering question No. 10, give the assessed valuation as fixed by law for the tax year beginning October 1st, 1928.

6. Do not fail to answer each question in the return. If unable to give information required, state reason on return why such information cannot be furnished.

7. A foreign corporation entering the State on or before July 1st of the current year will be subject to a franchise tax for the full year, but if such corporation enters the State after July 1st of the current year it will be subject to only one-half of the year's tax for the remainder of the current year. Such corporation is required to file return with the State Tax Commission ten days from the date of qualification to do business in this State. Failure to file return with the State Tax Commission within ten days subjects the corporation to a penalty of $10.00 per day.

State of Alabama

Foreign Corporation Return for Franchise Tax.

This return must be filed with the State Tax Commission, Montgomery, Alabama, on or before March 15th, 1930.

I, W. E. Bennett, as Secretary of Anglo-Chilean Nitrate Sales Corporation, a foreign corporation, for the purpose of assessing its franchise tax for the year 1930 in ac-

cordance with the provisions of Sections 53 to 71, inclusive of the Revenue Act approved July 22, 1927, do make the following report:

1. Organized on 31st day of August, 1927, under the laws of the State of New York.

2. Principal place of business 120 Broadway, New York, N. Y.

[fol. 9] 3. Qualified to do business in Alabama on the 10th day of October, 1927.

4. Principal place of business in Alabama: None.

5. Kind of business conducted in Alabama: Sale of Nitrate of Soda Imported from Chile and stored in Alabama in Original Packages.

6. Name of authorized agent in Alabama: Fred S. Ball and Fred S. Ball, Jr.

7. Address of authorized agent in Alabama: 712-20 First Natl. Bank Bldg., Montgomery, Ala.

8. Where should correspondence relating to franchise tax be addressed: Room 3523 120 Broadway, New York, N. Y.

9. To whom should correspondence relating to franchise tax be addressed: Anglo-Chilean Nitrate Sales Corporation, c/o J. A. Endweiss, Comptroller, Room 3523, 120 Broadway, New York, N. Y.

10. Property assessed for taxation in Alabama as at October 1, 1929 (this information for distribution of tax, as provided by Section 57 of Revenue Act approved July 22nd, 1927): None.

(Information required below to be furnished from the Books of the Corporation as at December 31, 1929, or at close of fiscal year ended in 1929.)

11. Cash on hand and on deposit in Alabama: None.

12. Accounts and notes receivable due by residents (corcorporations or individuals) of Alabama: None.

13. Accounts and notes receivable due by persons (individual or corporate) not residents of Alabama arising from

shipments or sales of articles manufactured in Alabama, or from stores, warehouses or storage depots maintained in Alabama: None.

14. Amount of prepaid insurance, interest, etc., and other deferred debits in Alabama: None.

15. Book value of capital stock owned in corporation organized under the laws of Alabama: None.

16. Book value of bonds of the State of Alabama or of any county or municipality thereof or of corporations organized under the laws of Alabama: None.

17. Book value of property assessed for taxation in Alabama: None.

[fol. 10] 18. Book value of property, both tangible and intangible, in Alabama not assessed for taxation in Alabama and not included in answering Questions 11 to 17 above: 33,455,763 lbs. (net weight) of nitrate imported into Alabama by corporation and in store there in original package, book value $712,846.72

$712,846.72
2.00
$1,425.69 Tax

19. Book value of other assets in Alabama not enumerated above: None.

20. Loans secured by mortgage on real estate in Alabama on which the recording privilege tax has been paid and not included in amounts under Questions 12 and 13: None.

21. A condensed general balance sheet, showing separately the value of each asset within and without the State of Alabama, drawn from the books of the corporation as at December 31, 1929, or as at —— is hereto attached and made a part of this return.

Balance-sheet as at December 31, 1929

Assets		Liabilities	
Employed in Alabama: None.		Capital Stock.....	$100,000.00
Outside of Alabama: ——.		Accounts Payable.....	5,094,647.54
*Nitrate on hand.....	$5,022,676.90	Deficit (Red).....	71,429.12
Accounts receivable...	59,457.06	Total Liabilities.	$5,123,218.42
Prepaid Commissions..	3,468.13		
Prepaid Insurance.....	603.92		
Cash	37,012.41		
Total Outside of Ala.	$5,123,218.42		
Total Assets....	5,123,218.42		

*Of the above, "Nitrate on Hand" 33,455.763 lbs., valued at $712,486.72, were in storage in original packages in Alabama on December 31, 1929, having been imported from Chile, S. A.

22. A brief statement of all property, real and personal, owned by the corporation in Alabama, giving the location and value of such property by counties:

[fol. 11] See No. 18.—Imported from Chile and stored in Mobile, Alabama, in original imported packages.

(Signature of officer:) W. E. Bennett. (Name of corporation:) Anglo-Chilean Nitrate Sales Corporation.

STATE OF NEW YORK,
County of New York:

Before me, Joseph O. Johnson, a Notary Public in and for said County and State on this the 14th day of March, 1930, personally appeared W. E. Bennett known to me to be the Secretary of Anglo-Chilean Nitrate Sales Corporation a foreign corporation and being by me first duly sworn, doth depose and say that the foregoing statement made to the State Tax Commission of Alabama, for the purpose of assessing the franchise tax of said corporation is a true, full and correct statement.

Witness under my hand this 14th day of March, 1930.

Joseph O. Johnson, Notary Public, —— County, —— State. (Seal.)

(This space for use of State Tax Commission)

F-1040.

Dated: Received —— —, ——. Audited by G. O.

Amount of franchise tax determined by Tax Commission: $1,425.69.

Corporation notified March 31, 1930.
Attorney General notified April 14th, 1930.
Filed in office May 19th, 1930.

Jno. R. Matthews, Register.

[fol. 12] In Circuit Court of Montgomery County

Petition—Filed Sept. 30, 1931

To the Honorable Judges of said Court:

Your petitioner, Anglo-Chilean Nitrate Sales Corporation, a foreign corporation, shows unto your Honors as follows:

1. Your petitioner avers that it is a corporation duly organized and chartered under the laws of the State of New York; that it was duly incorporated in the State of New York under the laws thereof on October 31st, 1929, and has since that time continuously been a corporation; that your petitioner duly qualified to do business in the State of Alabama on October 10th, 1927, and has since that date and is now qualified to do business in this State; that the respondent in this case is the State of Alabama of the United States of America.

2. Petitioner further avers that between October 10th, 1927, and March 31st, 1930, petitioner was engaged in the business of importing into the United States nitrate of soda from Chile, South America, through the Port of Mobile, Alabama, and other ports of the United States; that said corporation sold and delivered said nitrate of soda to consumers both within and without the State of Alabama; that on December 31st, 1929, said corporation had on hand in the State of Alabama 33,455,763 pounds of nitrate of soda which had been imported by it into the United States from Chile, South America, which was then stored in a public warehouse in the City of Mobile, Alabama; that all of said nitrate of soda when imported into the United States through the Port of Mobile, Alabama, was contained in bags, each bag containing approximately 100 pounds of nitrate of soda; that said nitrate of soda was stored in a public warehouse in said original bags subsequently sold

and delivered by the petitioner in the original bags in which the same was imported; that between the date of importation of said nitrate of soda into the United States through the Port of Mobile, Alabama, and its sale and delivery by the petitioner, none of said nitrate of soda had been removed from the original bags in which it was imported, nor have the original bags at any time been broken into.

3. That since October 10th, 1927, the principal office of petitioner has been and is now at 120 Broadway, New York City, New York; that between October 10th, 1927, and March 31st, 1930, said corporation sold said nitrate of soda [fol. 13] through a salesman in the State of Alabama, who was compensated by commissions on his sales and who paid his own operating expenses; that all orders taken by said salesman were taken subject to the approval of the New York office of your petitioner, and that no orders so taken were effective until signed and approved by your petitioner in New York City; that when any such orders were accepted and approved by your petitioner in New York City, directions were then given by the Home Office of the petitioner to ship the nitrate of soda so ordered to the consumers in the original bags in which the nitrage of soda was imported into the United States and stored in warehouse in Mobile, Alabama; that such directions were given by the New York Office of your petitioner to Walsh Stevedoring Company of Mobile, Alabama, an entirely independent contractor, which had an arrangement with your petitioner to handle the importation of said nitrate of soda for petitioner, store the same in a public warehouse, and forward it to the particular customer after a sale thereof by petitioner; that all nitrate of soda that has been sold by petitioner and delivered by it to the warehouse in Mobile, Alabama, between October 10th, 1927, and March 31st, 1930, as aforesaid, was packed in Chile, South America, shipped from Chile and imported into the United States through the Port of Mobile, Alabama, all solely in the said original bags.

4. That upon receipt from the New York Office of your said petitioner of directions to ship nitrate of soda in pursuance of a sale as hereinbefore described, said Walsh Stevedoring Company forwarded said nitrate of soda to the ultimate consumer, together with a bill of lading, the ship-

ping documents being sent to the consumer through the bank of collection nearest the consumer; that all transactions have been for cash; that the consumer has received the nitrate of soda only when it took up the shipping documents through the local bank of collection by paying the draft attached thereto for the purchase price of said nitrate of soda; that all funds received in payment have been remitted by the local bank to the Merchants National Bank of Mobile, Alabama, and immediately forwarded by that bank to the petitioner in New York City; that since October 10th, 1927, petitioner has not maintained any bank account in Alabama, all expenses incurred in Alabama being paid [fol. 14] from the New York office.

5. That on December 31st, 1929, the petitioner had no accounts or bills receivable in Alabama, and at no time has it had any of its money in Alabama, except during the brief interval while the funds in payment of the nitrate of soda were being transmitted from the local bank through the Merchants National Bank of Mobile, Alabama to your petitioner in New York City; that the only bills receivable that your petitioner has ever owned in the State of Alabama were owned on December 31st, 1927, in the amount of $7,-277.37, and then collected by the petitioner; that other than said nitrate of soda your petitioner has not since January 1st, 1928, owned any property in the State of Alabama; and it has not since — date employed any capital in the State of Alabama.

6. On March 14th, 1930, your petitioner filed with the Tax Commission of the State of Alabama a return and written statement under oath as required by Statute 58 of the Acts of the Legislature of Alabama of 1927 (page 177) on blanks furnished it by the State Tax Commission; that a correct copy of said return and written statement is attached hereto, marked "Exhibit A" and made a part of this petition; that on March 31st, 1930, the Tax Commission of the State of Alabama made a final assessment of a tax on the franchise of said corporation in an amount of $1,425.69; that a correct copy of said assessment made by said State Tax Commission, marked "Exhibit B" is attached to this petition and made a part hereof; that as a basis for said assessment, said State Tax Commission held said nitrate of soda of petitioner on hand in said warehouse in Mo-

bile, Alabama, on December 31st, 1929, as hereinabove described, to come within the meaning of the phrase "capital employed in this State", as used in the provisions of the Acts of the Legislature relating to the assessment of a franchise tax against foreign corporations (Acts of 1927, page 176, Section 54); that in fact said nitrate of soda imported by petitioner, as above described, was the sold basis for said final assessment against your petitioner by said State Tax Commission; that on the — day of April, 1930, the petitioner took an appeal from said final assessment to the Circuit Court of Montgomery County, sitting in Equity, by filing on that day with the Register of said Circuit Court due notice of appeal; and by also on said day filing said notice with the said State Tax Commission [fol. 15] (a correct copy of said notice is attached to this petition, marked "Exhibit C" and made a part hereof) and by duly filing with the Register of said Circuit Court a bond for said appeal as required by the laws of the State of Alabama; that a correct copy of said bond, marked "Exhibit D" is attached to this petition and made a part hereof; that said appeal is now pending in the Circuit Court of Montgomery County, In Equity, and that this petition is filed in furtherance of said appeal by your petitioner, who is the appellant, and for the purpose of vacating said final assessment.

The premises considered, your petitioner prays that the State of Alabama, respondent on this appeal, be required to defend against this appeal, and be required to answer the allegations of this petition from Paragraph 1 to Paragraph 6, inclusive; that upon final hearing of the pleadings and proof your Honors will order, adjudge and decree that the said final assessment made against your petitioner be vacated in its entirety, and your petitioner be released from all obligation to pay the same or any part thereof; that if your petitioner is in any wise mistaken in its above prayer for relief, that your Honors will grant to your petitioner any further and additional relief as may in equity and good conscience be due to your petitioner in the premises:

And your petitioner will ever pray, etc.,

Lange, Simpson & Brantley, Attorneys for the Petitioner.

Foot Note

The State of Alabama, respondent on this appeal, is required to answer each and every allegation of this petition, from Paragraphs 1 to 6, inclusive, but oath thereto is expressly waived.

Lange, Simpson & Brantley, Attorneys for the Petitioner.

[File endorsement omitted.]

[fol. 16] In Circuit Court of Montgomery County

Motion to Strike—Filed Oct. 22, 1931

Comes the State of Alabama by its attorneys, and moves to strike the petition herein filed, and for grounds of such motion says:

First. That there is no provision of law for the filing of such petition.

Second. That the proceeding is an appeal from the assessment made by the State Tax Commission against petitioner, and that the statute providing for such appeal makes no provision for such petition.

Third. That the transcript of the record of the State Tax Commission is the only matter which this Court can consider on this hearing, and that this petition is without authority of law.

Thomas E. Knight, Jr., Attorney General. Frontis H. Moore, Assistant Attorney General.

[File endorsement omitted.]

In Circuit Court of Montgomery County

Demurrer—Filed Oct. 22, 1931

Comes the State of Alabama, and demurs to the bill or petition filed herein, and for grounds of demurrer says:

First. There is no equity in the bill.

Second. That the bill with the exhibits thereto affirmatively show that the petitioner is liable for the tax assessed.

Third. That the bill and exhibits thereto affirmatively show that the petitioner was a foreign corporation which had qualified to do business in Alabama, that it was doing business in the State of Alabama on the 1st day of January, 1930, that it had property within the State to the amount show- in the bill or exhibits thereto, and that petitioner is thereby liable for the tax assessed by the State Tax Commission.

Fourth. That the petition with the exhibits thereto, shows on its face that petitioner had capital employed in the State of Alabama from January 1st, 1930, that the petitioner was a foreign corporation duly qualified to do business in the State of Alabama, and liable for the franchise tax assessed on such capital employed.

[fol. 17] Thomas E. Knight, Jr., Attorney General.
Frontis H. Moore, Assistant Attorney General.

[File endorsement omitted.]

In Circuit Court of Montgomery County

Answer—Filed Oct. 22, 1931

Comes the State of Alabama, and without waiving any motions, demurrers or objections heretofore filed, but insisting on same, answers the petition herein filed as follows:

First. It admits the allegations of paragraph one of said petition except that petition avers that petitioner was incorporated under the laws of the State of New York, October 31, 1927, whereas the exhibit shows that petitioner was organized under the laws of the State of New York, August 31, 1927.

Second. Petitioner neither admits nor denies the allegations contained in paragraphs two, three, four and five of said bill, but demands strict proof of same.

Third. Petitioner admits the allegations contained in paragraph six of said bill. The State of Alabama further answering said bill, avers that petitioner is a foreign corporation organized under the laws of the State of New York, which prior to January 1, 1930, had qualified to do business in the State of Alabama, and was so qualified on January 1, 1930; that on December 31st, 1929, the petitioner had nitrate in the City and County of Mobile, which is within the State of Alabama, to the amount of Seven Hundred and Twelve Thousand Eight Hundred and Forty-six dollars and seventy-two cents ($712,846.72) as shown by their franchise tax return made to the State Tax Commission; that the said Tax Commission considered the same as capital employed within the State of Alabama by a foreign corporation, and assessed the petitioner for franchise tax for the year 1930, and based on such capital employed imposed a tax of One Thousand Four Hundred and Twenty-five dollars and sixty-nine cents ($1,425.69) under the authority of Revenue Act approved July 22, 1927, being Acts [fol. 18] of the Legislature of 1927, p. 139, and for further answer the State of Alabama avers that this is not a tax on imports, but is a franchise tax for the privilege of doing business within the State of Alabama.

Wherefore respondent prays that this petition and appeal be dismissed, and a judgment here rendered holding petitioner liable for the amount of the tax assessed by the State Tax Commission, together with such costs and penalties as shall have accrued.

Thomas E. Knight, Jr., Attorney General; Frontis H. Moore, Assistant Attorney General, (Attorneys for the State of Alabama).

[File endorsement omitted.]

IN CIRCUIT COURT OF MONTGOMERY COUNTY

ANGLO-CHILEAN NITRATE SALES CORPORATION

vs.

STATE OF ALABAMA

AGREED STATEMENT OF FACTS—Filed Oct. 22, 1931

It is agreed by and between the attorneys representing the Appellant in this cause and the attorneys representing

the State that the agreed statement of facts hereunto attached are admitted upon the following stipulations:

1. That the State objects to the admission of any evidence other than that shown by the record and transcript certified by the State Tax Commission.

2. That the State maintains that no other evidence can be introduced than that shown by the transcript and record of the State Tax Commission.

3. That the State maintains that this proceeding is merely a review of the judgment of the State Tax Commission and no other evidence is admissable than that shown by the record. It is further stipulated that should the Court overrule the foregoing objections of the State to the admission of [fol. 19] testimony other than that shown by the transcript of the record of the State Tax Commission then the agreed statement of facts hereto attached shall be admitted subject to all legal objections as to relevency, competency and admissibility.

This 21st day of September, 1931.

Lange, Simpson & Brantley, Attorney- for Anglo-Chilean Nitrate Sales Corporation. Thomas E. Knight, Jr., Attorney General. Frontis H. Moore, Assistant Attorney General.

Agreed Statement of Fact-

It is hereby agreed between the State of Alabama and Anglo-Chilean Nitrate Sales Corporation that the following is a true statement of facts covering the above case relating to the validity of a franchise tax levied against said corporation by the State Tax Commission on March 31, 1930; which statement of facts shall be taken to be the evidence in this cause:

Anglo-Chilean Nitrate Sales Corporation was organized under and by virtue of the Laws of the State of New York, and its certificate of incorporation was filed in the office of the Secretary of State of the State of New York on August 31, 1927. It qualified to do business in the State of Alabama on October 10, 1927. Between October 10, 1927, and March 31, 1930, the corporation was engaged in the business

of importing into the United States nitrate of soda from Chile, South America, through the Port of Mobile, Alabama, and other ports in the United States. That said corporation sold and delivered said nitrate of soda to customers both within and without the State of Alabama. That on December 31, 1929, said corporation had on hand 33,455,763 pounds of nitrate of soda, which had been imported by it into the United States from Chile, South America, and was stored in public warehouse in the City of Mobile, Alabama. That all of said nitrate of soda, when imported into the United States through the Port of Mobile, Alabama, was contained in bags, each bag containing approximately 100 pounds of nitrate of soda, and that said nitrate of soda was stored in a public worehouse in said original bags, and [fol. 20] subsequently sold and delivered by the corporation in the original bags in which the same was imported. That between the date of importation of said nitrate of soda into the United States through the Port of Mobile, Alabama, and its sale and delivery by the corporation, none of said nitrate of soda had been removed from the original bags in which it was imported, nor have the original bags at any time been broken into.

That since October 10th, 1927, the principal office of the corporation has been and is now at 120 Broadway, New York City, New York. That between October 10, 1927 and March 31, 1930 said corporation sold said nitrate of soda through a salesman in the State of Alabama, who was compensated by commissions on his sales and paid his own operating expenses. All orders taken by said salesman were taken subject to the approval of the New York office of said corporation, and no orders so taken were effective until signed and approved by the corporation in New York City. When any such orders were accepted and approved by the corporation in New York City, directions were then given by the home office to ship the nitrate of soda so ordered to the customer in the original bags in which the same was imported into the United States and stored in warehouse in Mobile, Alabama. Such directions were given by the New York office of the corporation to Walsh Stevedoring Company, Post Office Box 55, Mobile, Alabama, an entirely independent contractor, which had an arrangement with said corporation to handle the importation of said nitrate of soda for said corporation, store the same in a

public warehouse, and forward it to the particular customer after a sale thereof by the corporation.

All nitrate of soda that has been sold by the corporation and delivered by it from the warehouses in Mobile, Alabama, between October 10, 1927, and March 31, 1930, was packed in Chile, South America, shipped from Chile, and imported into the United States, through the Port of Mobile, Alabama, solely in the original bags.

Upon receipt from the New York office of said corporation of directions to ship nitrate of soda in pursuance of a sale, as hereinbefore described, said Walsh Stevedoring Company forwarded said nitrate of soda to the ultimate consumer, together with a bill of lading, the shipping documents being sent to the customer through the bank of collec- [fol. 21] tion nearest the customer. All transactions have been for cash. The consumer has received the nitrate of soda only when he took up the shipping documents through the local bank of collection by paying the draft attached thereto for the purchase price of said nitrate of soda. All funds received in payment have been remitted by the local bank to the Merchants National Bank of Mobile, Alabama, and immediately forwarded by that bank to the corporation at New York City.

Since October 10th, 1927, the corporation has not maintained any bank account in Alabama, all expenses incurred in Alabama being paid from the New York office.

On December 31, 1929 the corporation had no accounts or bills receivable in Alabama and at no time has it had any of its money in Alabama, except during the brief interval while the funds in payment of the nitrate of soda are being transmitted from the local bank through the Merchants National Bank of Mobile, Alabama. Other than nitrate of soda, the corporation has not owned or employed in the State of Alabama between October 10, 1927 and March 31, 1930 any property, and it has during said time employed no capital in the State of Alabama, except that on December 31, 1927 it had accounts or bills receivable of $7,277.37, or unless the importation into the United States through the Port of Mobile, Alabama, and the storage in Mobile, Alabama, and sale of said nitrate of soda in the manner hereinabove described be considered capital employed in the State of Alabama. (The question referred to as to whether this constitutes capital employed in the State

is, of course, a question reserved for the consideration of the Court, and no admissions are made by either party to this procedure on this question.)

On March 14th, 1930, the said corporation filed with the Tax Commission of the State of Alabama a return and written statement under oath, as required by Section 58 of the Acts of the Legislature of Alabama of 1927 (page 177) on blanks furnished it by the State Tax Commission. It is agreed that a copy of the statement and return so made and filed with the State Tax Commission be attached to this statement of facts and made an exhibit hereto. It is further agreed that on March 31, 1930, the Tax Commission of the State of Alabama made a final assessment of a tax on the franchise of the said corporation in an amount of [fol. 22] $1,425.69 for the year 1930. From this assessment the said corporation has appealed to the Circuit Court of Montgomery County, Alabama, sitting in Equity.

The State of Alabama, by Thomas E. Knight, Attorney General. Anglo-Chilean Nitrate Sales Corporation, a Corporation, by Lange, Simpson & Brantley, Its Attorneys.

[File endorsement omitted.]

In Circuit Court of Montgomery County

[Title omitted]

Order of Submission

This cause coming on to be heard is submitted for decree upon the pleadings and proof as noted by the Register. This November 27th, 1931.

Walter B. Jones, Circuit Judge.

In Circuit Court of Montgomery County

[Title omitted]

Note of Testimony—Filed Nov. 27, 1931

Appellant being called offers the following testimony, towit:

1st. Notice of appeal from final assessment by Anglo-Chilean Nitrate Sales Corporation.

2nd. Petition of Appellant.

3rd. Certified copy of records of State Tax Commission showing notice of appeal filed by appellant with State Tax Commission, the final assessment made by the State Tax Commission of the franchise tax of appellant corporation, written statement and return made by appellant Corporation to the State Tax Commission as required by Statute.

4th. Agreed statement of facts.

[fol. 23] Appellee being also called, offers the following testimony, towit:

1st. Motion to strike petition of appellant.

2nd. Demurrer to petition of appellant.

3rd. Answer to petition of appellant.

4th. Agreed statement of facts.

5th. Certified copy of records of State Tax Commission showing rate and assessment of franchise tax of Anglo-Chilean Nitrate Sales Corporation for year beginning January 1, 1930, etc.

I hereby certify that the above note of testimony is correct, this the 27th day of November, A. D. 1931.

John R. Matthews, Register.

[File endorsement omitted.]

In Circuit Court of Montgomery County

In Equity. No. 6313

Anglo-Chilean Nitrate Sales Corporation

vs.

State of Alabama

Decree—Filed Nov. 27, 1931

This is an appeal by the Anglo-Chilean Nitrate Sales Corporation, a foreign corporation organized under the laws of New York, from a final assessment made against

said corporation on March 31st, 1930, by the State Tax Commission; and the matter now comes on to be heard before the court upon the appeal from the said assessment, together with the petition of the appellant, the motion of the State to strike the petition, the demurrer of the State to the petition, and the answer of the State to the petition, and upon the agreed statement of facts and the testimony as noted by the register. And the same having been argued to the Court and now being understood by the Court, it is

Ordered, adjudged, and decreed by the Court:

(1) That the motion of the State to strike the petition filed herein on September 30, 1931, be and the same is hereby denied.

(2) That the demurrer of the State to the petition filed herein on September 30, 1931, be and the same is hereby overruled.

[fol. 24] (3) That the said final assessment made by the State Tax Commission of Alabama against the said Anglo-Chilean Nitrate Sales Corporation, on March 31, 1930, be and the same is hereby vacated and annulled.

(4) That the costs of this matter be and the same are hereby taxed against the State of Alabama.

Done at Montgomery, Alabama, this November 27th, 1931.

Walter B. Jones, Circuit Judge.

[File endorsement omitted.]

[fol. 25] In Circuit Court of Montgomery County

[Title omitted]

Notice of Appeal—Filed December 9, 1931

Comes the State of Alabama and hereby appeals to the Supreme Court of Alabama from the decree of the Circuit Court of Montgomery County, In Equity, in the above styled cause, rendered on November 27, 1931.

This the 8th day of December, 1931.

State of Alabama, by Thomas E. Knight, Jr., Attorney General; Frontis H. Moore, Assistant Attorney General, Its Attorneys

Citation, in usual form, showing service on Lange, Simpson & Brantley, omitted in printing.

[fol. 26] In Circuit Court of Montgomery County

[Title omitted]

Certificate of Appeal

I, John R. Matthews, Register of the Circuit Court of Montgomery County, Alabama, In Equity, do hereby certify that an appeal was taken in the above stated cause on the 9th day of December, 1931, by the defendant, State of Alabama, from a decree in said cause on the 27th day of November, 1931, to the Supreme Court of the State of Alabama, and that said appeal is made returnable to the present term of said Supreme Court.

Given under my hand and seal of office, this the 10th day of December, 1931.

John R. Matthews, Register of the Circuit Court of Montgomery County, in Equity. (Seal.)

[fol. 27] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 28] In Supreme Court of Alabama

State of Alabama

vs.

Anglo-Chilean Nitrate Sales Corporation

Agreement as to Exhibits

It is stipulated and agreed between the parties in the above styled cause that no question shall be raised by virtue of the failure to include in the record as exhibits to the petition filed by the Appellee (page 12 of Transcript), the exhibits described therein, to wit: Exhibit A being a copy of the franchise tax return made by the corporation; Exhibit B

being a copy of the final assessment made by the Tax Commission; Exhibit C being copy of notice of appeal filed with the Register of the Circuit Court, and with the State Tax Commission; and Exhibit D being a copy of bond filed with the Register of the Circuit Court.

It is further stipulated and agreed that said Exhibits may be considered by the Court as fully as if same were shown in the record and attached to said petition shown on record, page 12, said Exhibits fully appearing otherwise in the record on pages 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the record.

It is further stipulated and agreed that these Exhibits are added to complete the petition and that the objections to the petition in its entirety made by the State are in no wise affected by the addition of these Exhibits.

This 12 day of January, 1932.

State of Alabama, by Thomas E. Knight, Jr., Attorney General. Frontis H. Moore, Assistant Attorney General. Anglo-Chilean Nitrate Sales Corporation, by Lange, Simpson & Brantley, by R. B. Barnes, Its Attorney.

[fol. 29] IN SUPREME COURT OF ALABAMA

[Title omitted]

ASSIGNMENTS OF ERROR

Comes the State of Alabama, appellant in the above styled cause and assigns the following errors appearing in the transcript of the record of the court below, and for grounds thereof says:

1. That the Court below erred in denying the motion of the State to strike the petition filed by the corporation in the Court below. Tr. pp. 12, 16 and 23.

2. That the Court below erred in overruling the demurrers of the State to such petition. Tr. pp. 12, 16 and 23.

3. That the Court below erred in overruling the State's objection to the admission of any evidence other than the record and transcript certified by the State Tax Commission. Tr. p. 18.

4. That the Court below erred in the admission of anything other than the transcript of the record of the State Tax Commission as certified by the State Tax Commission.

5. That the Court below erred in and by its final decree in vacating and annulling the final assessment made by the State Tax Commission against the Anglo-Chilean Nitrate Sales Corporation on March 31, 1930. Tr. p. 24.

6. That the Court below erred in and by its final decree in vacating and annulling the final assessment made by the State Tax Commission against the Anglo-Chilean Nitrate Sales Corporation from which appeal was prosecuted by the corporation, and in not sustaining such final assessment. Tr. p. 24.

This Jan. 12, 1932.

State of Alabama, by Thomas E. Knight, Jr., Attorney General; Frontis H. Moore, Assistant Attorney General, Its Attorneys.

To Anglo-Chilean Nitrate Sales Corporation or Lange, Simpson and Brantley and R. B. Barnes, its atrorneys of record:

You will take notice of the foregoing assignment of errors.

This Jan. 12, 1932.

State of Alabama, by Thomas E. Knight, Jr., Attorney General. Frontis H. Moore, Asst. Attorney General.

[fol. 30] IN SUPREME COURT OF ALABAMA

[Title omitted]

ORDER OF SUBMISSION—Jan. 14, 1932

Come the parties, by attorneys, and submit this cause on briefs for decision.

IN SUPREME COURT OF ALABAMA

STATE OF ALABAMA

vs.

ANGLO-CHILEAN NITRATE SALES CORP.

JUDGMENT—May 12, 1932

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is manifest error. It is therefore considered that the decree of the Circuit Court be reversed and annulled and the cause remanded to said Court with directions for a decree in accord with the views expressed in the opinion of this Court in said cause. It is also considered that the Appellee pay the costs of appeal of this Court and of the Circuit Court.

[fol. 31] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

In Equity. 3 Div., 996

STATE OF ALABAMA

v.

ANGLO-CHILEAN NITRATE SALES CORPORATION

Appeal from Montgomery Circuit Court

OPINION—May 12, 1932

GARDNER, J.:

The appeal is by the State from the decree of the equity court overturning the final assessment of a franchise tax of the Anglo-Chilean Nitrate Sales Corporation, a foreign corporation, for the year 1930, entered by the Tax Commission of this State. The assessment was based upon the valuation of the capital employed within the State, as au-

thorized by our statute passed in obedience to the mandate of our Constitution. Gen. Acts 1927, p. 176; Section 232, Constitution of Alabama; L. & N. R. R. Co. v. State, 201 Ala. 317, 78 So. 93; Ellis v. Handley, 214 Ala. 539, 108 So. 343; Kansas City M. & B. R. R. Co. v. Stiles, 182 Ala. 138; L. & N. R. R. Co. v. State, 39 S. Ct. Rep. 18.

[fol. 32] The cause was tried in the court below upon an agreed statement of facts which will appear in the report of the case.

The corporation defended upon the theory, evidently accepted by the chancellor, that the basis of the assessment was the valuation of the nitrate imported from Chile, stored in a public warehouse in Mobile, Alabama, in the original packages or sacks of one hundred pounds each and as such constituted imports, immune from State taxation under the provisions of our Federal Constitution, Article 1, section 10, clause 2, as construed in Brown v. Maryland, 6 Law. Ed. 678; Cook v. Pa., 24 Law. Ed. 1015; May v. New Orleans, 44 Law. Ed. 1165.

The defendant duly qualified as a foreign corporation to do business in this State, appointed a resident agent, and that it actually engaged in business in Alabama by selling its nitrate through a salesman both within and without the State appears as an uncontroverted fact. It seeks to be relieved from this franchise tax solely upon the theory the imported nitrate, the sale of which constitued its business, was immune from State taxation.

But we think the argument stresses too far the inhibition against State taxation of imports found in our Federal Constitution and overlooks the nature of the tax here in question. The Federal Constitution, in the respect here pertinent, is that "no state shall without the consent of the Congress lay any imports or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." The franchise tax here imposed applies [fol. 33] alike to all foreign corporations engaged in business in this State. It makes no reference to imports which are here involved solely because of the business in which the corporation was engaged. The following familiar general principle of law is not questioned:

"It must be regarded as finally settled by frequent decisions of this court that, subject to certain limitations as respects interstate and foreign commerce, a state may im-

pose such conditions upon permitting a foreign corporation to do business within its limits as it may judge expedient; and that it may make the grant or privilege dependent upon the payment of a specific license tax, or a sum proportioned to the amount of its capital used within the State." New York State v. Roberts, 171 U. S. 658.

And in Hern Silver Mining Co. v. New York, 143 U. S. 305, the opinion quotes from the early case of Paul v. Virginia, 8 Wall. 168, as follows:

"Having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporations entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."

And, after stating that this doctrine is settled by the decisions and may be considered at rest, the opinion proceeds:

[fol. 34] "Only two exceptions or qualifications have been attached to it in all the numerous adjudications in which the subject has been considered, since the judgment of this court was announced more than half a century ago in Bank of Augusta v. Earle, 13 Pet. 519. One of these qualifications is that the state cannot exclude from its limits a corporation engaged in interstate or foreign commerce, established by the decision in Pensacola Telegraph Co. v. Western Union Telegraph Co., 96 U. S. 1, 12. The other limitation on the power of the state is, where the corporation is in the employ of the general government. * * * Having the absolute power of excluding the foreign corporation the state may, of course, impose such conditions upon permitting the corporation to do business within its limits as it may judge expedient; and it may make the grant or privilege dependent upon the payment of a specific license tax, or a sum proportioned to the amount of its capital."

It has also become equally as well settled that an excise tax may properly be measured by tax immune property. In discussing this question the court in Home Ins. Co. v. New York, 134 U. S. 594, used the following expressions:

"The validity of the tax can in no way be dependent upon the mode which the state may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows. It may seek in this way to increase its revenue to the extent to which it has been cut off by exemption of other property from taxation. * * * From the very nature of the tax, being laid upon a franchise given by the state, and removable at pleasure, it cannot be affected in any way by the character of the property in which its capital stock is invested."

[fol. 35] This principle was fully recognized and given application in the recent case of Educational Films Corporation v. Ward, 51 Sup. Ct. Rep. 170. There the corporation challenged the franchise tax assessed against it so far as it was measured by the amount of royalties received from copyrights which were immune from state taxation. The court denying relief, considered the question answered in Flint v. Stone Tracy Co., 220 U. S. 107, where was reaffirmed the distinction, repeatedly made, between a tax, invalid because laid directly on governmental instrumentalities or income derived therefrom, and an excise which is valid because imposed on corporate franchises, even though the corporate property or income which is the measure of the tax embraces tax exempt securities or their income, and numerous illustrations from the adjudicated cases are noted, among them those holding a state inheritance tax valid, although measured by the value of United States bonds which are transmitted (Plummer v. Coles, 178 U. S. 115); a tax on net income, though receipts from exports are included in the compilation (Peck v. Lowe, 247 U. S. 165); the inclusion in a state income tax of receipts from interstate commerce, held not a prohibited burden on such commerce.—United States Glue Co. v. Oak Creek, 247 U. S. 321. Further illustrative is Kansas City F. S. & M. R. Co. v. Botkin, 240 U. S. 227, where

it is held that, though a state may not tax tangible property located beyond its boundaries (Refrigerator Transit Co. v. Kentucky, 199 U. S. 194), yet it may measure a tax on franchises of domestic corporations by corporate property, even though without the state.

[fol. 36] And, after observing that the franchise statute there in question could have no application independently of the corporation's enjoyment of the privilege of exercising its franchise, the tax obviously was not exclusively a tax on income apart from the franchise, the court in the Ward case, supra, made the following observations which we consider as having some bearing upon the instant case:

"Under the Constitution the privilege of exercising the corporate franchise is the legitimate object, and the immunity of federal instrumentalities from taxation, a legitimate restriction, of the state power to tax. To give both to the power and to the immunity such a practical construction as will not unduly restrict the power of the government imposing the tax, or the exercise of the functions of the government which may be affected by it, is the problem necessarily involved in determining the extent of the immunity. See Metcalf & Eddy v. Mitchell, 269 U. S. 514, 523, 524, 46 S. Ct. 172, 70 L. Ed. 384. So far as it concerns the power of a state to impose a tax on corporate franchises, the problem has long since ceased to be novel. While this court, since McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579, has consistently held that the instrumentalities of either government, or the income derived from them, may not be made the direct object of taxation by the other, Weston v. City Council of Charleston, 2 Pet. 449, 7 L. Ed. 481; Dobbins v. Commissioners of Erie County, 16 Pet. 435, 10 L. Ed. 1022; Home Savings Bank v. Des Moines, 205 U. S. 503, 27 S. Ct. 571, 51 L. Ed. 901; Indian Territory Illuminating Oil Co. v. Oklahoma, 240 U. S. 522, 36 St. Ct. 453, 60 L. Ed. 779; Federal Land Bank v. Crosland, 261 U. S. 374, 43 S. Ct. 385, 67 L. Ed. 703, 29 A. L. R. 1, it has held with like consistency that the privilege of exercising the corporate franchise is no less an appropriate object of taxation by one government merely because the corporate property or net income, which is made the measure of tax, may chance to include the obligations of the other, or the income derived from them.

The constitutional power of one government to reach this permissible object of taxation may not be curtailed because of the indirect effect which the tax may have upon the other. * * *

[fol. 37] "It is said that there is no logical distinction between a tax laid on a proper object of taxation, measured by a subject-matter which is immune, and a tax of like amount imposed directly on the latter; but it may be said with greater force that there is a logical and practical distinction between a tax laid directly upon all of any class of government instrumentalities, which the Constitution impliedly forbids, and a tax such as the present, which can in no case have any incidence, unless the taxpayer enjoys a privilege which is a proper object of taxation, and which would not be open to question if its amount were arrived at by any other nondiscriminatory method.

"This court, in drawing the line which defines the limits of the powers and immunities of state and national governments, is not intent upon a mechanical application of the rule that government instrumentalities are immune from taxation, regardless of the consequences to the operations of government. The necessity for marking those boundaries grows out of our constitutional systems, under which both the federal and the state governments exercise their authority over one people within the territorial limits of the same state. The purpose is the preservation to each government, within its own sphere, of the freedom to carry on those affairs committed to it by the Constitution, without undue interference by the other. * * *

"Having in mind the end sought, we cannot say that the rule applied by this Court for some seventy years, that a nondiscriminatory tax upon corporate franchises is valid, notwithstanding the inclusion of tax exempt property or income in the measure of it, has failed of its purpose, or has worked so badly as to require a departure from it now, or that the present tax, viewed in the light of actualities, imposes any such real or direct burden on the federal government as to call for the application of a different rule." [fol. 38] The cases relied upon by appellee (Ozark Pipe Corporation v. Monier, U. S. Supreme Court, 69 Law Ed. 439; Postal Telegraph Co. v. Adams, 155 U. S. 688; Western Union Tel. Co. v. Kansas, 216 U. S. 1; Galveston H. & S. A. R. Co. v. Texas, 52 Law Ed. 1031) involved the

question of undue burden upon interstate commerce, immunity of which from state interference has been zealously guarded by our federal decisions (Western Union Tel. Co. v. Kansas, supra), and concerning which the court has expressed difficulty in prescribing a satisfactory rule, and as to which a distinction has also been made between corporations organized to carry on interstate commerce, and having a quasi public character, and corporations organized to conduct strictly private business.—New York v. Roberts, supra.

The Roberts case, supra, had to deal also with the matter of imports and these observations were evidently intended in answer to argument rested upon the intertsate commerce cases cited in the opinion. In that case the basis for the franchise tax imposed by the state of New York bore relation to the amount of capital stock of the Michigan corporation within New York. The comptroller of New York, in fixing the amount of capital so employed, included a large sum as representing the value of imported crude drugs. The corporation sought a correction of the comptroller's assessment by reducing the amount to only its leasehold of the warehouse in that state. Discussing the matter of imports, here pertinent, the court said:

"Again, it is said that, even assuming that the importation of crude drugs and their sale in the original packages constituted a portion of the corporate business, no tax could be imposed by the state under the doctrine of Brown v. Maryland, 12 Wheat. 419.

[fol. 39] "But that case is inapplicable. Here no tax is sought to be imposed directly on imported articles or on their sale. This is a tax imposed on the business of a corporation, consisting in the storage and distribution of various kinds of goods, some products of their own manufacture and some imported articles. From the very nature of the tax, being laid as a tax upon the franchise of doing business as a corporation, it cannot be affected in any way by the character of the property in which its capital stock is invested."

We consider this language here much in point, particularly when it is considered that the corporation there only sought a reduction of the assessment upon the theory the imports were immune from state taxation. The distinction

between that case and this appears to be one of degree and not of kind.

The statute here under review has no reference to imports, but is merely of a general character relating to the fixation of the amount of a franchise tax upon foreign corporations doing business in this State. The matter of imports is entirely incidental, only indirectly and remotely affected by reason of the business conducted.

Nor do we consider the fact that in the Roberts case, supra, it appeared there was employed in New York a continuing capital used in the purchase of crude drugs, is a matter sufficient upon which to constitute any material distinction between that and the instant case. True, it here appears the corporation kept no bank account in Alabama. But it had a designated agent and sold its nitrate through a salesman in Alabama, the sales being to customers both within and without the State, and shipped [fol. 40] through its agency to such customers from the warehouse located in Alabama.

We attach no significance to the requirement that orders must first be approved in the New York office; nor to the fact that when shipment was made it was with bill of lading and shipping instructions through the bank nearest the customer, the sale being for cash and the proceeds forwarded by such local bank to the Merchants National Bank in Mobile, and by that bank at once forwarded to the corporation in New York. These details go to show the corporation was actually engaged in business in this State, and enjoying the protection of its laws, and the mere fact that the proceeds of the business did not linger on deposit in this State, but were forwarded to the New York office does not serve as a point of material differentiation in this case and that of the Roberts case, supra.

It is argued that the right to import carries with it also the right to sell (Brown v. Maryland, supra) in the original packages, and that the basis of measurement being the capital employed results in an imposition of a duty or tax upon such imports. The nitrate is shown to have been imported from Chile in one hundred pound sacks, and that is the form in which it was sold. We are not prepared to concede that the doctrine of "original package" cases would be extended to embrace importation of goods as to

which the method of shipment was likewise the method of sale; and we interpret some of the reasoning of the opinion in Fay v. New Orleans, supra, as tending to this [fol. 41] view. Certainly such an interpretation of the Constitution would at least have a tendency to encourage merchants and traders seeking to avoid state and local taxation, to import from abroad their merchandise in original salable packages.

But this question aside, and undetermined, we think the argument overlooks the nature of the tax here imposed, fully discussed in Flint v. Stone Tracy Co., supra, wherein it is noted that the tax is an excise upon the particular privilege of doing business in a corporate capacity, and with the advantages derived therefrom, the court saying:

"In the case at bar we have already discussed the limitations which the Constitution imposes upon the right to levy excise taxes, and it could not be said, even if the principles of the Fourteenth Amendment were applicable to the present case, that there is no substantial difference between the carrying on of business by the corporations taxed, and the same business when conducted by a private firm or individual. The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals. These advantages are obvious, and have led to the formation of such companies in nearly all branches of trade. The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships. It is this distinctive privilege which is the subject of taxation, not the mere buying or selling or handling of goods which may be the same, whether done by corporations or individuals."

[fol. 42] We think the authorities cited demonstrate there is no objection to the basis of measurement of the tax. Indeed argument to the contrary would be to argue the invalidity of our constitutional provision to that end, which has been approved here as well as in the federal courts.—Louisville and Nashville R. R. Co. v. State, supra. And clearly the corporation in the instant case has no just cause of complaint as to the basis of the measurement of the tax.

The Tax Commission based the assessment upon the value of the nitrate on hand and in storage in Alabama on December 31, 1929, amounting in value to $712,846.72, with nitrate on hand outside of Alabama of the value of five million dollars. The amount in storage on that particular date is merely taken as a fair estimate of the capital actually employed, but the amount actually sold in this State is not made to appear. The amount of sales may have been many times the above stated amount, but if there remained on hand only the nitrate of the value of $712,846.72, on December 31, 1929, the tax is to be so measured by that sum and not otherwise. These observations are merely to the point no unjust measurement is shown to have been applied, and to demonstrate that in fact the tax is not affected by the volume of business done in Alabama.

The cases disclose that in consideration of such character of taxation as here involved, the court looks to a practical rather than a logical or philosophical distinction, and the whole scheme of taxation is to be taken into account. "Regulation and commerce among the states both are practical rather than technical conceptions, and naturally their limits must be fixed by practical lines. * * * A practical line can be drawn by taking the whole scheme of taxation into account. That must be done by this court as best it can".—Galveston H. & S. A. R. Co. v. Texas, supra.

[fol. 43] As we read the cases consideration is proper to be given the evident purpose or object of the statute or its inevitable effect. In Educational Films Corporation v. Ward, supra, discussing this question, the court quoted from Maccallen Co. v. Massachusetts, 279 U. S. 631, the following excerpts: "A tax very well may be upheld as against any casual effect it may have upon the bonds of the United States when passed with a different intent and not aimed at them," and then proceeded to state: "It cannot be said that the present tax was aimed at copyrights."

And in Kansas City M. & B. R. R. Co. v. Stiles, 37 S. Ct. Rep. 58, the court in discussing the insistence that the franchise tax imposed a burden upon interstate commerce, said:

"So of the objection that the tax imposes a burden upon interstate commerce, the test of validity recognized in previous cases * * * is the nature and character of the tax imposed. The state may not regulate interstate commerce or impose burden upon it; but it is authorized to levy a tax within its authority, measured by capital in part used in the conduct of such commerce, where the circumstances are such as to indicate no purpose or necessary effect in the tax imposed to burden commerce of that character. In the present case, the franchise tax is imposed upon the capital stock of a corporation consolidated under the state law, and engaged in both interstate and intrastate commerce. We find nothing in the amount or character of the tax which makes it a burden upon interstate commerce, and so beyond the authority of the state to impose."

Certainly, if the courts are to be influenced upon such a consideration, then clearly there is nothing in the instant case to in the least indicate any purpose to in any manner interfere with imports or foreign commerce. These are [fol. 44] matters only incidentally and indirectly affected. The end sought by the decisions was the preservation to each government, both the federal and the state, within its own sphere, of the freedom to carry on those affairs committed to it by the Constitution, without undue interference the one by the other.—Educational Films Corporation v. Ward, supra.

Bearing in mind, therefore, the purpose to be attained by the adjudicated cases and considering the statute here involved, we are persuaded the State was properly within its sphere in demanding the franchise tax of the defendant corporation, and that such a tax in no manner violates any of its rights under the Federal Constitution, or tends to infringe upon the domain of the federal government.

We are therefore persuaded the chancellor incorrectly ruled in overturning the Tax Commission's assessment.

The decree will be reversed and the cause remanded to the court below for decree in accord with the views herein expressed.

Reversed and remanded.

Anderson, C. J., Bouldin and Foster, JJ., concur.

[fol. 45] IN SUPREME COURT OF ALABAMA

[Title omitted]

APPLICATION FOR REHEARING BY APPELLEE—Filed May 27, 1932

The appellee respectfully presents this its application for a rehearing in the above cause on which on May 12, 1932, an opinion and judgment were rendered by this Court reversing and remanding the decree theretofore rendered in the Circuit Court of Montgomery County, in Equity. Although appellee's brief in this cause was not filed within fifteen days after submission of the cause, this appeal was submitted by agreement between appellant and appellee with the understanding that appellee could not file its brief within the time specified and that the appellant would not resist a consideration by this court of an application for rehearing on that ground.

The appellee and applicant respectfully submits that this appeal involves questions which include within their scope the violation or non-violation of the Federal Constitution. The issues in this case are fraught not only with important consequences to this particular corporation, the appellee, but also to others who come within the bounds of the state for the purpose of engaging in local, foreign, or interstate commerce. Not only that, but a construction of the corporation franchise tax statutes as is called for in this case will necessarily have a far-reaching effect upon the public policy of the State.

In view therefore of what has been said above and in view further of the fact that a failure by this Honorable Court to consider this application on the technical ground that appellee has not as a matter of right the privilege of filing same, not having filed brief within the designated [fol. 46] fifteen days, might raise a serious procedural difficulty in the path of taking an appeal to the Federal Supreme Court by writ of error or other method we respectfully petition this Court to give this application a consideration on the merits. In support of the application appellee herewith submits the following brief and argument.

* * * * * * *

(Signed) Lange, Simpson & Brantley, Lange, Simpson & Brantley, Attorneys for Appellee.

I, Reid B. Barnes, one of the attorneys for the Appellee and Appellant, hereby certify that I have served a copy of the foregoing application and brief on Honorable Frontis H. Moore, Assistant Attorney General, Attorney for Appellant, before the filing of this application.

(Signed) Reid B. Barnes, Attorney for Apellee.

[File endorsement omitted.]

[fol. 47] IN SUPREME COURT OF ALABAMA

[Title omitted]

ORDER OVERRULING PETITION FOR REHEARING—June 9, 1932

The application for rehearing heretofore filed in this cause being duly examined and understood by the Court, it is considered and ordered that said application for rehearing be and the same is hereby overruled.

[fol. 48] IN SUPREME COURT OF ALABAMA

[Title omitted]

PRÆCIPE

Mr. Clerk:

Please incorporate the following portions of the record in the transcript on the appeal to the Supreme Court of the United States heretofore prayed by Anglo-Chilean Nitrate Sales Corporation, Appellee, from the final decision in this suit:

1. This præcipe.

2. Transcript of record from the Circuit Court of Montgomery County, pages No. 1 to 26, inclusive, together with certificate of record of the Register of the Circuit Court of Montgomery County, Alabama, and together with the assignment of errors of said State of Alabama (appellant in Supreme Court of Alabama).

3. The agreement in writing executed between the appellant and the appellee through their counsel of record on the 12th day of January, 1932, with reference to the exhibits to

the Petition of the Appellee in the Circuit Court of Montgomery County, Alabama; which agreement provides in substance that certain exhibits described in the petition being omitted at the end thereof, the same shall be considered as being incorporated in the proper place in the record.

4. The opinion of the Supreme Court of Alabama.

5. Order entered May 12, 1932, by the Supreme Court of Alabama, reversing the decree of the Circuit Court of Montgomery County, Alabama.

[fol. 49] 6. Application for re-hearing by appellee.

7. Order entered June 9th, 1932, by the Supreme Court of Alabama, denying application for re-hearing.

8. Petition for appeal.

9. Assignment of errors.

10. Order allowing appeal.

11. Citation.

(Signed) Root, Clark & Buckner, Lange, Simpson & Brantley, Attorneys for Anglo-Chilean Nitrate Sales Corporation, Appellee.

Service of copy of the foregoing præcipe acknowledged this 25 day of August, 1932.

(Signed) Frontis H. Moore, Assistant Attorney General of the State of Alabama, Attorney for the State of Alabama.

[fol. 50] IN SUPREME COURT OF ALABAMA

[Title omitted]

PETITION FOR APPEAL TO SUPREME COURT OF THE UNITED STATES

Considering itself aggrieved by the decision made by the Supreme Court of the State of Alabama in the above entitled cause on May 12, 1932, reversing a decree of the Circuit Court of Montgomery County, and by an order made herein by said Supreme Court on June 9, 1932, denying an application for rehearing, by which said decision became final, Anglo-Chilean Nitrate Sales Corporation, a corporation, the appellee above named, hereby prays that an ap-

peal by this appellee be allowed therefrom to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

For the errors assigned by appellee in its assignment of errors, presented herewith, the appellee above named, Anglo-Chilean Nitrate Sales Corporation, prays that the said final decision of the Supreme Court of the State of Alabama be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellee, and for costs.

(Signed) Root, Clark & Buckner, Lange, Simpson & Brantley, Attorneys for Appellee, Anglo-Chilean Nitrate Sales Corporation.

[fol. 51] IN SUPREME COURT OF ALABAMA

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes Anglo-Chilean Nitrate Sales Corporation, appellee herein, and in connection with its petition for appeal to the Supreme Court of the United States, makes and files this assignment of errors herein, to-wit, that the Supreme Court of the State of Alabama erred:

1. In reversing the decree of the Circuit Court of Montgomery County of the State of Alabama.

2. In holding that the statute of the State of Alabama, to-wit, Section 54 of Act No. 163, approved July 22, 1927, Alabama General Acts, 1927, page 176, under which the tax involved in this suit was assessed against the appellee, is not void as in violation of clause 2 of section 10 of Article I of the Constitution of the United States.

3. In holding that the aforesaid statute of the State of Alabama, under which the tax involved in this suit was assessed against the appellee, is not void as in violation of that part of section 8 of Article I of the Constitution of the United States which empowers Congress to regulate foreign commerce.

[fol. 52] 4. In holding that the aforesaid statute of the State of Alabama, as construed by the Supreme Court of Alabama in this suit, is not a tax on goods imported by the appellee from a foreign country and maintained in Alabama in the original package, and therefore not in violation of clause 2 of section 10 of Article I of the Constitution of the United States.

5. In holding that the aforesaid statute of the State of Alabama, as construed by the Supreme Court of Alabama in this suit, is not in violation of clause 2 of section 10 of Article I of the Constitution of the United States, in that it levies a tax upon the right of appellee to sell in the original package goods imported by it from a foreign country, and measures the tax by the amount of property of the appellee in the state, which property consists solely of nitrate of soda imported by appellee from Chile, S. A., and held by it in the original package.

6. In holding that the aforesaid statute of the State of Alabama, as construed by the Supreme Court of Alabama in this suit, is not void as in violation of section 8 of Article I of the Constitution of the United States, in that it levies a tax on the right of appellee to carry on foreign commerce in the State of Alabama, and measures such tax by the amount of property of the appellee in the state, which property consists solely of nitrate of soda imported by appellee from Chile, S. A., and held by it in the original package.

7. In holding that the aforesaid statute of the State of Alabama, as construed by the Supreme Court of Alabama in this suit, is not in violation of Clause 2 of Section 10 of Article I of the Constitution of the United States, in that it levies a corporate franchise tax upon appellee corporation for the privilege of engaging exclusively in the business of selling in the original packages goods imported by it from a foreign country.

[fol. 53] 8. In holding that the aforesaid statute of the State of Alabama, as construed by the Supreme Court of Alabama in this suit, is not void as in violation of Section 8 of Article I of the Constitution of the United States, in that it levies a corporate franchise tax on the appellee cor-

poration for the privilege of engaging exclusively in foreign commerce in the State of Alabama.

(Signed) Root, Clark & Buckner, Lange, Simpson & Brantley, Attorneys for Appellee, Anglo-Chilean Nitrate Sales Corporation.

[fol. 54] IN SUPREME COURT OF ALABAMA

[Title omitted]

ORDER ALLOWING APPEAL

On this 25 day of August, 1932, on reading the petition for appeal in this cause to the Supreme Court of the United States from the decision entered in the above entitled suit in this court on May 12th, 1932, and from the order entered in the above entitled suit on June 9, 1932, denying an application for a rehearing, and on reading the assignment of errors filed by appellee, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided,

It is ordered that an appeal be and the same hereby is allowed to the Supreme Court of the United States from the Supreme Court of the State of Alabama in the above entitled cause, as provided by law; and

It is further ordered that the Clerk of the Supreme Court of the State of Alabama shall prepare and certify a transcript of the record and proceedings in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within thirty days of this date; and

It is further ordered that security for costs on appeal be fixed in the sum of $750.00, and the appellee Anglo-Chilean Nitrate Sales Corporation having presented an undertaking in the sum of $750.00, executed by itself as principal and United States Fidelity and Guaranty Company, as surety, it is now ordered that such undertaking be and the same is hereby approved; and

[fol. 55] Whereas, the appellee Anglo-Chilean Nitrate Sales Corporation has already given a bond with good and sufficient surety, conditioned to pay such judgment as may be rendered against it in the Circuit Court of Montgomery County, Alabama,

It is further ordered that the appeal herein shall operate as a supersedeas.

Done this 25 day of August, 1932.

(Signed) Jno. C. Anderson, Chief Justice of the Supreme Court of Alabama.

[fol. 56] Citation, in usual form, showing service on Frontis H. Moore, omitted in printing.

[fols. 57 & 58] Bond on appeal for $750.00, approved August 25, 1932, omitted in printing.

[fol. 59] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 60] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation to Print Entire Record—Filed Sept. 28, 1932

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this Court in this case are as follows:

Point 1. The statute of the State of Alabama, to-wit: Section 54 of Act No. 163, approved July 22, 1927, Alabama General Acts, 1927, page 176, under which the tax involved in this suit was assessed against the appellant, as construed by the Supreme Court of Alabama in this case, is unconstitutional and void as repugnant to Clause 2 of Section 10 of Article I of the Constitution of the United States, in that it (a) levies a tax on goods imported by the appellant from a foreign country and maintained in Alabama in the original package; (b) levies a tax upon the right of appellant to sell in the original package goods imported by it from a foreign country, and measures the tax by the amount of property of the appellant in the State of Alabama, which property consists solely of nitrate of soda imported by appellant from Chile, South America, and held by it in the original package; and (c) levies a corporate franchise tax upon the appellant for the privilege of engaging exclusively in the business of selling in the

[fols. 61 & 62] original package goods imported by it from a foreign country.

Point 2. The aforesaid statute of the State of Alabama, under which the tax involved in this suit was assessed against the appellant, as construed by the Supreme Court of Alabama in this case, is unconstitutional and void as repugnant to Section 8 of Article I of the Constitution of the United States, in that it (a) levies a tax upon the right of appellant to carry on foreign commerce in the State of Alabama, and measures such tax by the amount of property of the appellant in the State, which property consists solely of nitrate of soda imported by appellant from Chile, South America, and held by it in the original package; and (b) levies a corporate franchise tax upon the appellant for the privilege of engaging exclusively in foreign commerce in the State of Alabama.

The appellant further represents that the whole of the record, as filed, is necessary for the consideration of the case, except the bond and citation upon this appeal.

Dated September 16, 1932.

Elihu Root, Jr., Counsel for Appellant.

The undersigned, attorney of record for the appellee herein, hereby acknowledges due and timely service of the above statement of points to be relied upon and designation of the parts of the record to be printed, and agrees that the said designation includes all parts of the record material and necessary to the consideration of the case, and hereby expressly waives all right to file a counter-designation of parts of the record to be printed.

Dated September 23rd, 1932.

Frontis H. Moore, Assistant Attorney-General of the State of Alabama, Counsel for Appellee.

[fol. 63] [File endorsement omitted.]

Endorsed on cover: File No. 37,074. Alabama Supreme Court. Term No. 377. Anglo-Chilean Nitrate Sales Corporation, appellant, vs. The State of Alabama. Filed September 19, 1932. File No. 37,074.

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CHARLES ELMORE CR

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 377.

ANGLO-CHILEAN NITRATE SALES CORPORATION,
Appellant,

vs.

STATE OF ALABAMA,
Appellee.

JURISDICTIONAL STATEMENT.

Comes now the appellant herein, Anglo-Chilean Nitrate Sales Corporation, a corporation organized and existing under the laws of the State of New York, and, in compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States, presents the following statement disclosing the basis on which it is contended that the Supreme Court of the United States has jurisdiction to review, on appeal, the judgment of the Supreme Court of the State of Alabama in this case.

(a) The jurisdiction of the Supreme Court of the United States to entertain an appeal in this case is conferred by Section 237 (a) of the Judicial Code of the United States, as amended, (28 U. S. C. A., §344 [a]), and Section 1 of the Act of Congress of January 31, 1928, (c. 14, 45 Stat. 54), which provide that the Supreme Court of the United States may review, upon appeal, a final judgment or decree

in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of the validity of the statute.

(b) The decision of the Supreme Court of Alabama, the highest court of the State of Alabama in which a decision in this case could be had, sought to be reviewed is a judgment entered the 12th day of May, 1932 (Record, page 30), reversing a decree of the Circuit Court of Montgomery County, State of Alabama, in equity, and an order entered by the Supreme Court of Alabama on the 9th day of June, 1932 (Record, page 47), overruling an application for a rehearing in said cause. The application for an appeal to this Court in this case was presented to the Chief Justice of the Supreme Court of Alabama on the 25th day of August, 1932 (Record, page 50), and an appeal was allowed by an order signed by said Chief Justice of the Supreme Court of Alabama on the same day (Record, pages 54-55).

(c) For a statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction of the appeal sought, the appellant, Anglo-Chilean Nitrate Sales Corporation, respectfully shows:

This case was begun by appellant by means of an appeal to the Circuit Court of Montgomery County of the State of Alabama, in equity, from a final assessment of a franchise tax made by the State Tax Commission of Alabama against appellant on the 31st day of March, 1930, in the amount of $1,425.69 (Record, pages 12-15), which said assessment, under the laws of the State of Alabama, had the force and effect of a judgment against appellant. In connection with

such appeal to the Circuit Court of Montgomery County, appellant gave bond, with good and sufficient surety, in double the amount of said final assessment made by the State Tax Commission, which bond was conditioned to pay such judgment as might be rendered against the appellant in the Circuit Court of Montgomery County (Record, pages 3-4).

The tax in question was assessed against appellant under the provisions of Section 54 of Act No. 163, approved July 22, 1927, Alabama General Acts, 1927, page 176, which provides in part as follows:

> "That every corporation organized under the laws of any other state, nation, or territory, and doing business in this state, except strictly benevolent, educational or religious corporations, shall pay annually to the state an annual franchise tax of two dollars ($2.00) on each one thousand dollars of the actual amount of capital employed in this State."

The petition of appellant on the appeal to the Circuit Court of Montgomery County showed that during the tax year appellant was engaged in Alabama in the business of selling nitrate of soda imported by the appellant into the United States from Chile, South America, all of which nitrate was sold by appellant in the original package, and that the only property held by the appellant in the State of Alabama during the tax year consisted of such nitrate of soda imported by appellant from Chile, South America, and stored by it in the original package (Record, page 12).

In the Circuit Court of Montgomery County, the appellant contended that the above mentioned statute of the State of Alabama, if construed to impose upon appellant the tax assessed by the State Tax Commission, was invalid

as in violation of Clause 2 of Section 10 of Article I of the Constitution of the United States, and as in violation of Section 8 of Article I of the Constitution of the United States.

On the 27th day of November, 1931, the Circuit Court of Montgomery County, in the State of Alabama, entered a decree adjudging, *inter alia,* that the said final assessment made by the State Tax Commission of Alabama against the appellant be vacated and annulled (Record, pages 23-24).

The State of Alabama thereupon appealed to the Supreme Court of Alabama from the above mentioned decree of the Circuit Court of Montgomery County (Record, page 25). On such appeal, the appellant again contended that the above mentioned statute of the State of Alabama, if construed to levy against appellant the tax assessed by the State Tax Commission, was invalid as in violation of Clause 2 of Section 10 of Article I of the Constitution of the United States and as in violation of Section 8 of Article I of the Constitution of the United States.

On the 12th day of May, 1932, the Supreme Court of Alabama, the highest court of the State of Alabama in which a decision in this case could be had, entered a judgment reversing the decree of the Circuit Court of Montgomery County and remanding the cause to such Circuit Court for a decree upholding the validity of the assessment made by the State Tax Commission (Record, page 30). The opinion of the Supreme Court of Alabama dealt with the Federal constitutional objections raised by the appellant, and overruled them (Record, pages 31-44). The opinion of the Supreme Court of Alabama has not yet been officially reported but is unofficially reported in *State* v. *Anglo-Chilean Nitrate Sales Corporation,* 142 So. Rep. 87.

On the 27th day of May, 1932, the appellant made an application for a rehearing to the Supreme Court of Alabama (Record, pages 45-46). This application was overruled without opinion on the 9th day of June, 1932 (Record, page 47).

(d) The cases believed by appellant to sustain the jurisdiction of the Supreme Court of the United States and which show that this case is one in which, under the legislation in force when the aforesaid Act of Congress of January 31, 1928, was passed, to wit, under Section 237 (a) of the Judicial Code of the United States, a review could be had in the Supreme Court of the United States on writ of error as a matter of right, are *Western Turf Association* v. *Greenberg,* 204 U. S. 359 (1907); *Dahnke-Walker Milling Company* v. *Bondurant,* 257 U. S. 282 (1921); *Alpha Cement Co.* v. *Massachusetts,* 268 U. S. 203 (1925). In each of these cases, as in the present case, there was drawn in question the validity of a statute of a State, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity. See also: *Miedreich* v. *Lauenstein,* 232 U. S. 236, 243 (1914); *Cissna* v. *Tennessee,* 246 U. S. 289 (1918).

ELIHU ROOT, JR.,
Counsel for Appellant.